

FIRST REGULAR SESSION

# SENATE BILL NO. 206

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PARSON.

Read 1st time January 7, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0597S.011

## AN ACT

To amend chapter 382, RSMo, by adding thereto eleven new sections relating to own risk and solvency assessment in connection with the business of insurance.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 382, RSMo, is amended by adding thereto eleven new sections, to be known as sections 382.500, 382.505, 382.510, 382.515, 382.520, 382.525, 382.530, 382.535, 382.540, 382.545, and 382.550, to read as follows:

**382.500. 1. The provisions of sections 382.500 to 382.550 shall apply to all insurers domiciled in this state that are not exempt under section 382.525.**

**2. The general assembly finds and declares that an own risk and solvency assessment (ORSA) summary report contains confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing such report. Such information includes proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if such information is made public. An ORSA summary report shall be a confidential document filed with the director, shall be shared only as stated in sections 382.500 to 382.550 to assist the director in the performance of the director's duties, and shall not be subject to public disclosure.**

**382.505. As used in sections 382.500 to 382.550, the following terms shall mean:**

**(1) "Director", the director of the department of insurance, financial institutions and professional registration;**

**(2) "Insurance group", those insurers and affiliates included**

6 within an insurance holding company system as defined in sections  
7 382.010 to 382.300;

8 (3) "Insurer", the same meaning as such term is defined in section  
9 382.010; except that, insurer shall not include agencies, authorities, or  
10 instrumentalities of the United States, its possessions and territories,  
11 the Commonwealth of Puerto Rico, the District of Columbia, or a state  
12 or political subdivision of a state;

13 (4) "NAIC", the National Association of Insurance Commissioners;

14 (5) "Own risk and solvency assessment" or "ORSA", a confidential  
15 internal assessment appropriate to the nature, scale, and complexity of  
16 an insurer or insurance group conducted by such insurer or insurance  
17 group of the material and relevant risks associated with the insurer's  
18 or insurance group's current business plan, and the sufficiency of  
19 capital resources to support such risks;

20 (6) "ORSA guidance manual", the current version of the Own Risk  
21 and Solvency Assessment Guidance Manual developed and adopted by  
22 the National Association of Insurance Commissioners (NAIC), as  
23 amended. A change in the ORSA guidance manual shall be effective on  
24 January first following the calendar year in which the changes have  
25 been adopted by the NAIC;

26 (7) "ORSA summary report", a confidential high-level summary  
27 of an insurer's or insurance group's own risk and solvency assessment.

382.510. An insurer shall maintain a risk management framework  
2 to assist the insurer with identifying, assessing, monitoring, managing,  
3 and reporting on its material and relevant risks. Such requirement  
4 may be satisfied if the insurance group of which the insurer is a  
5 member maintains a risk management framework applicable to the  
6 operations of the insurer.

382.515. Subject to the provisions of section 382.525, an insurer  
2 or the insurance group of which the insurer is a member shall conduct  
3 an ORSA consistent with a process comparable to the ORSA guidance  
4 manual. An ORSA shall be conducted no less than annually and  
5 additionally at any time when there are significant changes to the risk  
6 profile of the insurer or the insurance group of which the insurer is a  
7 member, as determined by the insurer or the insurance group.

382.520. 1. Upon the director's request and no more than once  
2 each year, an insurer shall submit to the director an ORSA summary

3 report or any combination of reports that together contain the  
4 information described in the ORSA guidance manual applicable to the  
5 insurer and to the insurance group of which the insurer is a  
6 member. Notwithstanding any request from the director, if the insurer  
7 is a member of an insurance group, the insurer shall submit the report  
8 or reports required under this subsection if the director is the lead  
9 state regulator of the insurance group as determined by the procedures  
10 within the Financial Analysis Handbook adopted by the National  
11 Association of Insurance Commissioners.

12       2. The report or reports shall include a signature of the insurer's  
13 or insurance group's chief risk officer or other executive having  
14 responsibility for the oversight of the insurer's enterprise risk  
15 management process attesting to the best of his or her belief and  
16 knowledge that the insurer applies the enterprise risk management  
17 process described in the ORSA summary report and that a copy of the  
18 report has been provided to the insurer's board of directors or the  
19 appropriate committee thereof.

20       3. An insurer may comply with subsection 1 of this section by  
21 providing the most recent and substantially similar report or reports  
22 provided by the insurer or another member of an insurance group of  
23 which the insurer is a member to the director of another state or to a  
24 supervisor or regulator of a foreign jurisdiction if such report or  
25 reports provide information that is comparable to the information  
26 described in the ORSA guidance manual. Any such report or reports in  
27 a language other than English shall be accompanied by a translation of  
28 such report or reports into the English language.

      382.525. 1. An insurer shall be exempt from the requirements of  
2 sections 382.500 to 382.550 if:

3       (1) The insurer has annual direct written and unaffiliated  
4 assumed premium, including international direct and assumed  
5 premium but excluding premiums reinsured with the Federal Crop  
6 Insurance Corporation and Federal Flood Program, of less than five  
7 hundred million dollars; and

8       (2) The insurance group of which the insurer is a member has  
9 annual direct written and unaffiliated assumed premium, including  
10 international direct and assumed premium but excluding premiums  
11 reinsured with the Federal Crop Insurance Corporation and the

12 Federal Flood Program, of less than one billion dollars.

13           2. If an insurer qualifies for exemption under subdivision (1) of  
14 subsection 1 of this section, but the insurance group of which the  
15 insurer is a member does not qualify for exemption under subdivision  
16 (2) of subsection 1 of this section, the ORSA summary report that may  
17 be required under section 382.520 shall include every insurer within  
18 the insurance group. Such requirement may be satisfied by the  
19 submission of more than one ORSA summary report for any  
20 combination of insurers, provided any combination of reports includes  
21 every insurer within the insurance group.

22           3. If an insurer does not qualify for exemption under subdivision  
23 (1) of subsection 1 of this section, but the insurance group of which the  
24 insurer is a member qualifies for exemption under subdivision (2) of  
25 subsection 1 of this section, the only ORSA summary report that may  
26 be required under section 382.520 is the report applicable to such  
27 insurer.

28           4. An insurer that does not qualify for exemption under  
29 subsection 1 of this section may apply to the director for a waiver from  
30 the requirements of sections 382.500 to 382.550 based upon unique  
31 circumstances. In deciding whether to grant the insurer's request for  
32 waiver, the director may consider the type and volume of business  
33 written, ownership and organizational structure, and any other factor  
34 the director considers relevant to the insurer or insurance group of  
35 which the insurer is a member. If the insurer is part of an insurance  
36 group with insurers domiciled in more than one state, the director shall  
37 coordinate with the lead state director or regulator and with the other  
38 domiciliary state directors or regulators in considering whether to  
39 grant the insurer's request for a waiver.

40           5. Notwithstanding the exemptions in this section, the director  
41 may require that an insurer maintain a risk management framework,  
42 conduct an ORSA, and file an ORSA summary report:

43           (1) Based on unique circumstances, including but not limited to  
44 the type and volume of business written, ownership and organization  
45 structure, federal agency requests, and international supervisor  
46 requests;

47           (2) If the insurer has risk-based capital for company action level  
48 event as set forth in section 375.1255 or other applicable risk-based

49 capital law, meets one or more of the standards of an insurer deemed  
50 to be in hazardous financial condition as defined in section 375.539, or  
51 otherwise exhibits qualities of a troubled insurer as determined by the  
52 director.

53         **6. If an insurer that qualifies for an exemption under subsection**  
54 **1 of this section subsequently no longer qualifies for such exemption**  
55 **due to changes in premium as reflected in the insurer's most recent**  
56 **annual statement or in the most recent annual statements of the**  
57 **insurers within the insurance group of which the insurer is a member,**  
58 **the insurer shall have one year following the year in which the**  
59 **threshold is exceeded to comply with the requirements of sections**  
60 **382.500 to 382.550.**

**382.530. 1. An ORSA summary report shall be prepared**  
2 **consistent with the ORSA guidance manual, subject to the requirements**  
3 **of subsection 2 of this section. Documentation and supporting**  
4 **information shall be maintained and made available upon examination**  
5 **or upon request of the director.**

6         **2. The review of an ORSA summary report and any additional**  
7 **requests for information shall be made using similar procedures**  
8 **currently used in the analysis and examination of multistate or global**  
9 **insurers and insurance groups.**

**382.535. 1. Documents, materials, or other information, including**  
2 **the ORSA summary report, in the possession of or control of the**  
3 **department of insurance, financial institutions and professional**  
4 **registration that are obtained by, created by, or disclosed to the**  
5 **director or any other person under sections 382.500 to 382.550 is**  
6 **recognized by this state as being proprietary and to contain trade**  
7 **secrets. All such documents, materials, or other information shall be**  
8 **confidential by law and privileged, shall not be subject to disclosure**  
9 **under chapter 610, shall not be subject to subpoena, and shall not be**  
10 **subject to discovery or admissible in evidence in any private civil**  
11 **action; except that, the director is authorized to use such documents,**  
12 **materials, or other information in the furtherance of any regulatory or**  
13 **legal action brought as a part of the director's official duties. The**  
14 **director shall not otherwise make such documents, materials, or other**  
15 **information public without the prior written consent of the insurer.**

16         **2. Neither the director nor any person who receives documents,**

17 materials, or other ORSA-related information, through examination or  
18 otherwise, while acting under the authority of the director or with  
19 whom such documents, materials, or other ORSA-related information  
20 are shared under sections 382.500 to 382.550 shall be permitted or  
21 required to testify in any private civil action concerning any  
22 confidential documents, materials, or other ORSA-related information  
23 subject to subsection 1 of this section.

24 3. In order to assist in the performance of the director's  
25 regulatory duties, the director:

26 (1) May, upon request, share documents, materials, or other  
27 ORSA-related information, including the confidential and privileged  
28 documents, materials, or other ORSA-related information subject to  
29 subsection 1 of this section, including proprietary and trade secret  
30 documents and materials with other state, federal, and international  
31 financial regulatory agencies, including members of any supervisory  
32 college authorized under this chapter, with the NAIC, and with any  
33 third-party consultants designated by the director; provided that, the  
34 recipient agrees in writing prior to receiving any such documents,  
35 materials, or other ORSA-related information to maintain the  
36 confidentiality and privileged status of such documents, materials, or  
37 other ORSA-related information and has verified in writing the legal  
38 authority to maintain confidentiality; and

39 (2) May receive documents, materials, or other ORSA-related  
40 information, including otherwise confidential and privileged  
41 documents, materials, or information, including proprietary and trade  
42 secret information or documents, from regulatory officials of other  
43 foreign or domestic jurisdictions, including members of any  
44 supervisory college authorized under this chapter, and from the NAIC,  
45 and shall maintain as confidential or privileged any documents,  
46 materials, or other ORSA-related information received with notice or  
47 the understanding that it is confidential or privileged under the laws  
48 of the jurisdiction that is the source of the document, material, or other  
49 ORSA-related information; and

50 (3) Shall enter into a written agreement with the NAIC or a  
51 third-party consultant governing sharing and use of ORSA-related  
52 information provided under sections 382.500 to 382.550 that is  
53 consistent with this subsection and that shall:

54 (a) Specify procedures and protocols regarding the  
55 confidentiality and security of information shared with the NAIC or a  
56 third-party consultant under sections 382.500 to 382.550, including  
57 procedures and protocols for sharing by the NAIC with other state  
58 regulators from states in which the insurance group has domiciled  
59 insurers. The agreement shall provide that the recipient agrees in  
60 writing to maintain the confidentiality and privileged status of ORSA-  
61 related documents, materials, or other ORSA-related information and  
62 has verified in writing the legal authority to maintain confidentiality;

63 (b) Specify that ownership of information shared with the NAIC  
64 or third-party consultant under sections 382.500 to 382.550 remains  
65 with the director and that the NAIC's or a third-party consultant's use  
66 of such information is subject to the direction of the director;

67 (c) Prohibit the NAIC or third-party consultant from storing any  
68 information shared under sections 382.500 to 382.550 in a permanent  
69 database after the underlying analysis is completed;

70 (d) Require prompt notice to be given to an insurer whose  
71 confidential information in the possession of the NAIC or a third-party  
72 consultant under sections 382.500 to 382.550 is subject to a request or  
73 subpoena to the NAIC or a third-party consultant for disclosure or  
74 production;

75 (e) Require the NAIC or a third-party consultant to consent to  
76 intervention by an insurer in any judicial or administrative action in  
77 which the NAIC or a third-party consultant may be required to disclose  
78 confidential information about the insurer shared with the NAIC or a  
79 third-party consultant under sections 382.500 to 382.550; and

80 (f) In the case of an agreement involving a third-party  
81 consultant, provide for the insurer's written consent.

82 4. The sharing of information and documents by the director  
83 under sections 382.500 to 382.550 shall not constitute a delegation of  
84 regulatory or rulemaking authority, and the director is solely  
85 responsible for the administration, execution, and enforcement of the  
86 provisions of sections 382.500 to 382.550.

87 5. No waiver of any applicable privilege or claim of  
88 confidentiality in the documents, proprietary and trade secret  
89 materials, or other ORSA-related information shall occur as a result of  
90 disclosure of such documents, materials, or ORSA-related information

91 to the director under this section or as a result of sharing as authorized  
92 in sections 382.500 to 382.550.

93           **6. Documents, materials, or other ORSA-related information in**  
94 **the possession or control of the NAIC or third-party consultants under**  
95 **sections 382.500 to 382.550 shall be confidential by law and privileged,**  
96 **shall not be subject to disclosure under chapter 610, shall not be**  
97 **subject to subpoena, and shall not be subject to discovery or admissible**  
98 **in evidence in any private civil action.**

**382.540. 1. Subject to subsection 1 of section 374.215, any insurer**  
2 **failing without just cause to timely file an ORSA summary report as**  
3 **required in sections 382.500 to 382.550 commits a level two violation**  
4 **under section 374.049 with respect to each day's delay.**

5           **2. The director may enforce the provisions of sections 382.500 to**  
6 **382.550 under sections 374.046 to 374.049.**

**382.545. If any provision of sections 382.500 to 382.550 or the**  
2 **application thereof to any person or circumstance is held invalid, such**  
3 **determination shall not affect the provisions or applications of sections**  
4 **382.500 to 382.550 which may be given effect without the invalid**  
5 **provision or application, and to that end the provisions of sections**  
6 **382.500 to 382.550 are severable.**

**382.550. Sections 382.500 to 382.550 shall become effective**  
2 **January 1, 2016. The first filing of ORSA summary reports shall be in**  
3 **2016 in accordance with section 382.520.**

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